

## **CITY BOARD OF ZONING APPEAL #06003**

### **-REVISED REPORT-**

**DATE SCHEDULED FOR PUBLIC HEARING:** April 28, 2006

**LOCATION:** Southwest of the intersection of North 27<sup>th</sup> Street and I-80.

**ADDRESS:** 2500 Wildcat Drive

**LEGAL DESCRIPTION:** Lot 1, Block 1, High Pointe North Commercial Park 3<sup>rd</sup> Addition.

**ZONING:** H-3 Highway Commercial

**EXISTING LAND USE:** Automobile Sales

#### **SURROUNDING LAND USE AND ZONING:**

North:	Open space, I-80	AG
South:	Commercial	H-3
East:	Open space, commercial	AG, H-3
West:	I-80, open space, commercial	R-3, H-3, I-3

**HISTORY: CZ#04042** - A text amendment to the Zoning Ordinance that proposed to increase the allowed changeable copy component from 80 square feet to 240 square feet. The City Council denied the proposed amendment by a 7-0 vote October 11, 2004.

**#S0000735** - A sign permit allowing an 80' tall sign, 360 square feet in area, with a 248' square foot changeable copy component was approved on December 8, 2000.

#### **TYPES OF APPEALS:**

1. THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE.

A. Lincoln Municipal Code (LMC) Section 27.69.270 limits the changeable copy component of a sign to 80 square feet in area. This appeal is requesting that the changeable copy component of the sign be allowed to be 248 square feet in area.

2. THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO AN ERROR.

A. Applicant is appealing the City's decision to revoke the sign permit issued in 2000 allowing the sign.

## **BACKGROUND**

This appeal had a public hearing before the Board at their March 31, 2006 meeting. During the hearing, the applicant requested a one month delay to allow time for the application to be amended to include an appeal relative to an error, alleging the City was wrong to issue the sign permit approved in 2000.

The Board voted to delay the request until April 28, 2006 to allow the appeal to be amended and for the required legal notice to be given. During testimony, staff noted that it was not clear whether the application satisfied the requirements to allege an error as contained in LMC. Staff indicated they would review the issue and report to the Board at the next meeting.

## **STAFF FINDINGS:**

1. The subject property is located at 2500 Wildcat Drive and is zoned H-3 Highway Commercial. This is the site of the Anderson Ford automobile dealership.
2. There is an existing 80' tall pole sign with a 360 square foot sign face on the dealership premises. Of the total sign face, 248 square feet are dedicated to a changeable copy component that allows different messages to be displayed.
3. LMC Section 27.69.270 limits the changeable copy component of a sign to 80 square feet in area. The existing sign exceeds this by 168 square feet. Otherwise, the sign complies with the requirements of Chapter 27.69 Signs.
4. On December 8, 2000, sign permit #S0000735 was approved for an 80' tall sign with a 360 square foot sign face and a 248 square foot changeable copy component. After the sign permit was issued, Building and Safety determined that it was issued in error because the 248 square foot changeable copy component exceeded the requirements of Section 27.69.270. Since erected, the City has had complaints about the sign from the public, and has had requests from other sign companies seeking to construct similar signs.
5. The owner was notified of the violation, and there have been several meetings between staff and the owner to resolve the violation. A chronology of events is attached and labeled "Brief Summary of Events Regarding Anderson Ford Sign."
6. Change of Zone #04042 was an attempt to modify the Zoning Ordinance to make the sign legal. The text amendment proposed increasing the allowed changeable copy sign component from 80 square feet to 248 square feet, but it was denied by the City Council on October 11, 2004.

7. The City's sign code and lighting standards are currently under review by staff and potential revisions are being discussed, including the current provision that allows an 80 square foot changeable copy component. Proposed revisions may or may not emerge, however staff is concerned that changeable copy signs like this one, especially near a high speed facility like I-80, can distract motorists and increase the likelihood of accidents.
8. As noted, the sign permit was issued in error and the sign does not comply with the requirements of the sign code. City administrative officials such as plans examiners do not have the authority under Lincoln Municipal Code to approve a sign with a changeable copy component in excess of 80 square feet. Only licensed sign contractors may apply for sign permits, and the Building and Safety Department believes Capitol Sign Company (a licensed sign contractor) was aware the proposed sign exceeded the requirements of the sign code at the time the permit was issued.
9. The Board of Zoning Appeals is empowered to grant variances "to the extent necessary to permit the owner a reasonable use of the land in those specified instances where there are peculiar, exceptional and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned." This site appears to be similar to others in the area and there do not appear to be any exceptional or unusual circumstances associated with this particular parcel of land.
10. The only hardship associated with this appeal appears to be a financial one, as the sign is built and in use and must be modified to comply with LMC. However, financial hardship is not within either the jurisdiction or scope and factors to be considered by the Board in granting a variance.
11. Regarding the second part of this appeal alleging an error on the part of an administrative official claiming the City improperly issued and then revoked the sign permit, it does not appear the Board can take action. LMC Section 27.75.030(a) states that "The decision of the Director of Building and Safety shall be made in writing and the appeal shall be taken within sixty days from such written decision by filing with the Director of Building and Safety a notice of appeal specifying the grounds thereof." Letters were sent notifying the applicant of Building and Safety's determination on 2/26/04 and 12/14/05. The Law Department finds that the sixty-day appeal period has expired on both these letters, and as a result the Board does not have authority to act.
12. Approval of this variance would allow this owner to have a sign with changeable copy component 168 square feet larger than allowed by LMC, and would give this dealership an advantage over others in the area.

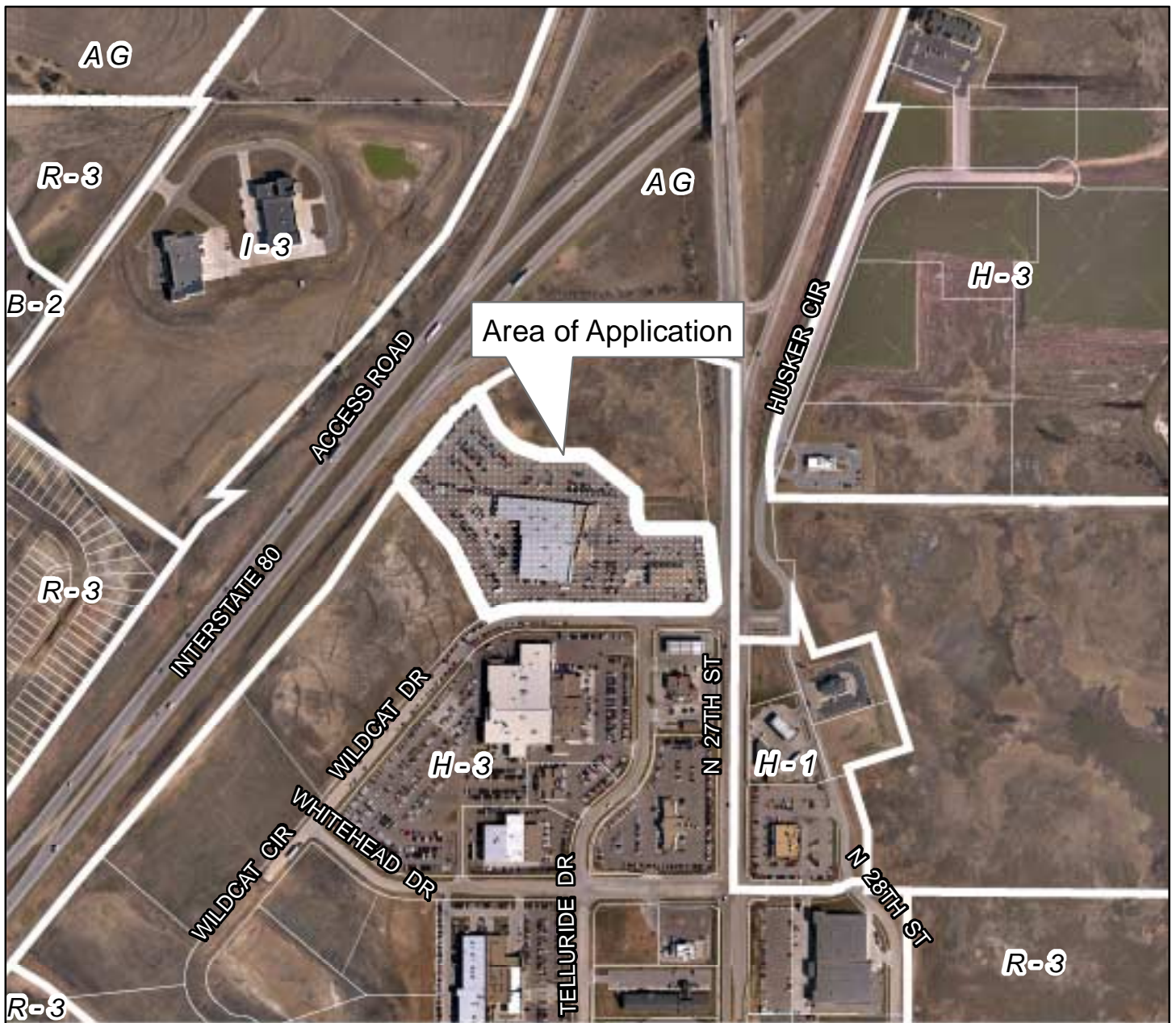
13. If this appeal is denied, the sign can remain at its current location and at its current size, but the changeable copy component cannot exceed 80 square feet in area. The options to achieve the reduced changeable copy component include removing the sign, or modifying the sign by reducing the changeable copy component to 80 square feet in area or less.

Prepared by

---

Brian Will, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner  
April 18, 2006

**APPLICANT:** Don Wesely  
5300 Leighton Avenue  
Lincoln, NE 68505  
402.325.8732



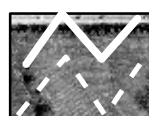
## Board of Zoning Appeals #06003 2500 Wildcat Drive

2005 aerial

### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile  
Sec. 36 T11N R6E



Zoning Jurisdiction Lines

City Limit Jurisdiction

